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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,010	04/03/2004	Gordon Walker Nugent		1590

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Gordon W. Nugent
160 Rivergate Drive
Wilton, CT 06897-3611

EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

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08/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/817,010	Applicant(s) NUGENT, GORDON WALKER	
	Examiner Frank B. Vanaman	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 104-115 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 104-115 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Application

1. Applicant's amendment, filed May 31, 2009, has been entered in the application. Claims 104-115, all newly added, are pending, claims 1-103 are now all canceled.

Claim Rejections - 35 USC § 112

2. Claims 104-107 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 104, lines 20-21, it is not clear what limitations are or are not to be associated with the phrase "usual retailer-supplied shopping carts"; in claim 104, lines 21 and 22, the use of "improved" which implies a comparison, without stating a standard for comparison (improved as compared to...) renders the recitation indefinite; in claim 104, lines 23-25, it is not clear whether or not applicant is attempting to incorporate method limitations in an apparatus claim, note that a claim encompassing two statutory types of invention (method and apparatus) is not definite and may be subject to a rejection under 35 USC 101.

Note MPEP 2173.06(p)(II):

A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. IPXL Holdings v. Amazon.com, Inc., 430 F.2d 1377, 1384, 77 USPQ2d 1140, 1145 (Fed. Cir. 2005); Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990) (claim directed to an automatic transmission workstand and the method of using it held ambiguous and properly rejected under 35 U.S.C. 112, second paragraph).

Such claims may also be rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. Id. at 1551.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 108-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seydel et al. (US 5,160,154) In view of Wu (US 5,201,540) and Raichlen (US 6,540,242). Seydel et al. teach a tall cart which may be utilized for the intended use as a

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shopping cart and which can accommodate a plurality of containers (90) which constitute bins or baskets having a deep-walled slot (95) in at least one wall; the containers connectable to the cart with a plurality of quick-attach and -detach locks forming retaining elements (20) constituted by slots, which interact with the containers to position a container wall (91, 93) between a locking projection (20, 21) and a tall spine (10); and a plurality of respective ledges forming support means (30) which may partially support an item not secured by the quick connect and -release locks, a lower most of (e.g., 45) which is located at a substantial height, the structure constructed of a light metal tubing (see col. 3, lines 62-68), the cart having attachments at least in the form of wheels (50) mounted on a leg (40) by quick release hub connectors (55, note col. 4, lines 37-41). Seydel et al. additionally teach that the tall cart may be arranged so that the locking portions (20, 21) are positioned at differing locations in alternate embodiments (compare figure 1a with figure 1b and figure 5).

The reference to Seydel et al. fails to teach a height-reducing means on the spine including a means for reducing the height of the spine. Wu teaches a cart having a spine portion (1, 2, 8, 9) divided into upper (1, 8, 9) and lower (2) portions connected by a locking hinge (33, 34, 35, figure 5) to allow selective folding of the frame, and the spine being separated into further first (9) and second (1) telescoping portion, wherein a telescoping lock (82, figure 6) is used to maintain an extended or retracted condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the spine of the cart taught by Seydel et al. with a lockingly telescoping and/or lockingly foldable connection as taught by Wu for the purpose of allowing the spine taught by Seydel et al. to be condensed into a more compact configuration when not in use.

Seydel et al. as modified by Wu fail to teach that the locking portions (20, 21) constitute quick-connect and quick-release means which may themselves be released. Initially, it is noted that Seydel et al. do, however, teach that the lock portions (20, 21) may be positioned in different locations on the spine. Raichlen teaches that it is well known to provide a cart having dual spine elements (20, 20) and a channel (14) with a locking upper connection device which may be mounted such that a lock (16, 19) is

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connected with a sliding block (15) which is slidably disposed on a channel portion (14) of the dual spine frame (20, 20) to allow variable positioning. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the locking portions (e.g., 20, 21) taught by Seydel et al., as modified by Wu, to include a block portion slidable upwardly and downwardly in a channel of a frame having at least two spines, as taught by Raichlen, for the purpose of allowing the locations of the locks to be varied, allowing the accommodation of different sized containers. Such a structure would result in a locked condition when the combined lock and block is lowered, and an unlocked condition when raised. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a frame having dual spines as taught by Raichlen for the purpose of providing a more robust frame structure.

As regards the intended use recitations, the cart of Seydel et al. as modified by Wu and Raichlen is capable of being maneuvered into proximity with a surface bearing a container, such that a container may be transferred to the cart without its entire weight being accommodated by a user, and the combined cart is understood to be operable by an operator, woman or man, having the strength to operate the elements associated with the cart.

5. Claims 112-115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,595,395) in view of Wu (US 5,201,540). Wilson teaches a tall cart having a frame (12) which supports a plurality of merchandise containers (38, 48, 60) with a plurality of pin connections (36, 50, 62) which engage with mating connections (on 37, 38; 48, 52, 54; 60, 64, 66) the mating connection mounts associated with the containers (37, 54, 64) being centered in a longitudinal direction near the respective upper edges of the containers to the breadth this limitation is actually claimed, so that they may be balanced to remain level (compare figures 1, 3 and/or figures 4, 6). Wilson further teaches that the frame may be made of plastic or metal (col. 4, lines 24-27) and that the bins may be of a number of types including "conventional recycle type bins" (col. 5, lines 38-40).

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The reference to Wilson fails to teach the pin mounts as being quick release type, however Wilson teaches an alternate embodiment where pivots (106) are provided on the cart to matingly engage with a recess (110) on the respective bins. As such, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the quick connect/release feature taught by the embodiment shown by Wilson at figures 4-6 with the frame and bin arrangement shown at figures 1-3 for the purpose of allowing the bins to be quickly removed in their entirety, for example to facilitate the quick changeover of materials carried in one bin for those carried in another. Wilson fails to specifically teach that the frame, optionally metal, is of a light alloy, however in the field of making carrying carts, low weight and high strength are well known to be desirable, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the frame from a light metallic alloy so as to provide a cart of reasonable strength without unduly increasing its weight. Wilson, whilst calling out 'conventional recycling' bins, fails to specifically describe them as being made from plastic, however, it is very well known that recycling bins may be made from plastic, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the bins taught by Wilson from plastic so as to provide a more resilient and long lasting container than, for example, one made from a cardboard. The reference to Wilson fails to teach the frame as being telescopic and having plural telescope locks. Wu teaches a cart having a frame portion (1, 2, 8, 9) and being separated into a first (9) and second (1) telescoping portion, wherein a telescoping lock (82, figure 6) is used to maintain an extended or retracted condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the frame of the cart taught by Wilson with a lockingly telescoping connection as taught by Wu (e.g., by providing each member 12 taught by Wilson as two telescoping parts, and each with a respective telescope lock) for the purpose of allowing the frame portion taught by Wilson to be condensed into a more compact configuration when not in use.

Allowable Subject Matter

6. Claim 104, as best understood, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claims 105-107, as best understood, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Comments

8. Applicant's comments, filed with the amendment, have been carefully considered. Applicant's continued comments directed to the speed of operation of applicant's lock with comparison to the speed of the operation of the lock taught by the modifying reference to Raichlen is noted, but is not persuasive. If applicant insists on continuing to describe the operation of Raichlen's lock as "slow, ponderous, laborious" applicant is hereby explicitly requested to provide factual support explicitly present in the reference to Raichlen that clearly classifies Raichlen's operation as being "slow, ponderous, laborious". In this case the operation of Raichlen's lock is "quick" compared to a locking device which requires more steps to operate and/or takes longer and/or requires tooling to manipulate. Applicant's reference to "Rube Goldberg" devices in association with the reference to Raichlen may well be construed to constitute a derogatory remark directed towards the prior art. Applicant is very pointedly reminded that applicant's specification was previously objected to for similar reasons (see the office action of Aug. 17, 2005, page 3), and *care should be taken* to ensure that remarks that may be deemed derogatory are not made. While applicant's specification has been amended to remove the previously noted remarks, applicant's remarks in the amendment papers remain a permanent part of the record.

Applicant's arguments concerning the reference to Seydel as including no lock are not persuasive, in that the recited 'lock' in the claims rejected by the combination including Seydel does not include any structural limitations beyond "quick connect" and "quick release". Seydel's structure 30 and 20, in combination with a container (note figures 3, 4) forms a lock to the breadth this limitation is claimed, and indeed a broader

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interpretation of Seydel than has been applied herein may not even require the reference to Raichlen in that a released condition may be interpreted as the condition where the container remains supported by lower member 30 but has been removed from upper retention element 20. Technically, the locking arrangement of Seydel (support 30, retention element 20, burden 90) is notably 'quicker' to use than applicant's in that it is not even necessary to manipulate the position of retention element when connecting or disconnecting the burden. Note that 'wedging the container' constitutes a very quick connect and quick release mechanism commensurate in scope with the exceptionally broad recitation actually set forth in applicant's claims. Since applicant appears to assert that Seydel lacks elements which are also not actually recited in applicant's claims, it appears clear that applicant is attempting to convince the examiner to read unclaimed limitations into the claims. This is not proper in the prosecution of a patent application, and limitations from applicant's specification are not read into the claims if they are not recited therein. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As regards reading unclaimed limitations from the specification into the claims

From MPEP 2111:

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

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As regards the reference to Wilson, it again appears as though applicant is arguing limitations which are not in the claims. Wilson's frame carries pin mounts which mate with pin accommodating elements which are centered near the upper edge of laterally spaced ends of the containers, and the combined mounts support the containers. The alternate embodiment taught by Wilson (figure 4) the combination of cavity 110 and pin 106 allows the pin to be releasably connected with the supporting structure which is mounted near the upper edge of the container end. Applicant may desire to review the commonly held definition of "near", which applicant has explicitly used in defining the relationship between the container and the mount.

Applicant has requested the assistance of the examiner in drafting an allowable claim. The examiner suggests amending claim 104 to delete the material set forth in lines 20-25 ("whereby shoppers can enjoy...other destinations").

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A response to this action should be mailed to:

Mail Stop _____

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

F. VANAMAN
Primary Examiner
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